ties and the invasion of the realm of the imagination. In *Rhodes v. State,* 128 Ind., 189, it is stated that it is very doubtful if such a charge is correct. In *People v. Stubenvoil,* 62 Mich., 329, such a charge was held to be inaccurate, but not of sufficient consequence in a trial for manslaughter to be error. Many decisions, however, hold such a charge to be fatal error. *Childs v. State,* 34 Neb., 236; *State v. Morey,* 25 Ore., 242; *State v. Sauer,* 133 Ind., 677; *Abbott v. Oklahoma,* 94 Pac., 179. These decisions are based upon the grounds that a juror may feel a reasonable doubt which he may be unable to give a reason for in words, and that such a charge would in effect shift the burden of proof upon the defendant, requiring him to prove his innocence beyond a reasonable doubt. The holding in the principal case, in accord with the last cases cited, seems to lay down the better rule, for the reason given, that too heavy a burden would be placed upon the defendant if such a charge were allowed. The most widely approved definition of a reasonable doubt is that laid down by Chief-Justice Shaw in *Commonwealth v. Webster,* 5 Cush. (Mass.), 295, that a reasonable doubt is such a doubt as would cause a prudent and rational man to act or to pause or hesitate to act in the determination of any of the affairs of life of the highest importance to himself.

DAMAGES—BREACH OF THE MARRIAGE PROMISE—AGGRAVATION—SEDUCTION.—DALRYMPLE V. GREEN, (KAN.), 129 PAC., 1145.—Defendant promised to marry the plaintiff and, by means of this promise, induced her to permit sexual intercourse. This was followed by other acts of such intercourse from which pregnancy, miscarriage, and sickness resulted. This is an action for damages for the breach of the promise to marry. *Held,* that in assessing damages, the jury might take into consideration the first act of intercourse, but not those subsequent acts from which pregnancy, miscarriage and sickness resulted, as such could not be the proximate result of the promise of marriage, nor the breach of it. Mason, Burch, and Benson, JJ., *dissenting.*

At common law a woman had no right of action solely on the ground of seduction. *Hamilton v. Lomax,* 26 Barb., 615; *Cline v. Templeton,* 78 Ky., 550; *Conlon v. Cassidy,* 17 R. I., 518. But in a few American States this right has been conferred by statute. *Marshall v. Taylor,* 98 Cal., 55; *Watson v. Watson,* 49 Mich., 540; *Hood v. Sudderth,* 111 N. C., 215; *Revised Code of Iowa,* 1907, Sec. 3470. In most States evidence that the woman was seduced under a promise of marriage is admissible in aggravation of damages in an action for the breach of promise to marry. *Sramek v. Sklenar,* 73 Kan., 450; *Hattin v. Chapman,* 46 Conn., 607; *Paul v. Frazier,* 3 Mass., 71; *Wells v. Padgett,* 8 Barb., 323; *Osmun v. Winters,* 25 Ore., 260. In Tennessee, it was held that in such an action evidence of an unsuccessful attempt to seduce may be shown in aggravation of damages. *Kaufman v. Fye,* 99 Tenn., 145. This evidence, however, is admissible only where the seduction follows the promise and is effected by means of it. *Espy v. Jones,* 37 Ala., 379. In a great number of States it

is held that the seduction must be alleged in the complaint to be admissible in evidence. *Leavitt v. Cutler,* 37 Wis., 46; *Cates v. McKinney,* 48 Ind., 562; *Tyler v. Salley,* 82 Me., 128; *Dent v. Pickens,* 34 W. Va., 240. A very small minority of States will not admit evidence of seduction in an action for breach of promise. *Baldy v. Stratton,* 11 Pa. St., 316; *Wrynn v. Downey,* 27 R. I., 454. In a few cases evidence that seduction was followed by pregnancy was held inadmissible. *Tyler v. Salley, supra; Giese v. Schultz,* 65 Wis., 487. The opposite view, however, prevails in a far greater number of jurisdictions. *Tubbs v. Van Kleek,* 12 Ill., 446; *Wilds v. Bogan,* 57 Ind., 453; *Musselman v. Barker,* 26 Neb., 737; *Hotchkins v. Hodge,* 38 Barb., 117; *Johnson v. Levy,* 122 La., 118. In *Musselman v. Barker, supra,* the Court places emphasis on the fact that the child was begotten while the agreement for marriage existed and on the faith thereof on the part of the plaintiff. The same facts were emphasized in *Johnson v. Jarvis,* 2 Ohio Dec., 312. In Illinois, it was held that in an action for breach of promise evidence of a venereal disease contracted from the defendant was incompetent in aggravation of damages because too remote, although evidence of pregnancy resulting from intercourse had with the defendant in faith of his promise is competent. *Churan v. Sebesta,* 131 Ill. App., 330. In civil actions for seduction, the defendant's acts of sexual intercourse are regarded as being one transaction, and evidence of continuous acts, including subsequent conception and the birth of a child, may be shown as bearing on the question of damage. *Breiner v. Nugent,* 136 Iowa, 322; *Thompson v. Glendening,* 1 Head (Tenn.), 287; *Davis v. Young,* 90 Tenn., 303. The most favorable criticism that can be made of the decision in the principal case is that it is extremely technical. It is contrary to reason and human observation to concede that a promise of marriage may induce one act of sexual intercourse and then to hold that it will so far cease to operate as not to make it the prime inducement of subsequent acts and their natural results.

HABEAS CORPUS—APPEAL—DENIAL OF WRIT.—*Ex parte* COPLEY, 153 S. W. (TEX.), 325.—*Held,* that no appeal can be taken from a refusal to issue a writ of *habeas corpus.*

The writ of *habeas corpus,* though a writ of right, is not one of course, except where it is so provided by statute. *Broomhead v. Chisolm,* 47 Ga., 390; *Conn. Gen. Stat.* (Rev. 1902), Sec. 997. The general rule is that probable cause for its issuance must be shown. *In re Heather,* 50 Mich., 261; *O'Malia v. Wentworth,* 65 Me., 129. There is a conflict in the cases dealing with the question raised in the principal case, as to whether an appeal can be taken from a refusal to issue a writ of *habeas corpus.* The rule that an appeal can be taken is laid down in *Costello v. Palmer,* 20 App. Cas. (D. C.), 210; *Ex parte Edwards,* 11 Fla., 174; *Wood on Habeas Corpus,* 142. The contrary rule, that an appeal cannot be taken is held in *Gill on Petition,* 92 Ky., 118; *Ex parte Ainsworth,* 27 Tex., 731. Before an appeal can be taken in any litigated matter there must be final adjudica-